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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,293	08/18/2003	Ted Marchildon	O120 0009	2002

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,293

Applicant(s)

MARCHILDON, TED

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
4a) Of the above claim(s) 2-7 and 11-16 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,8-10,17 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 30 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,8-10,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sparkes (US 5515648) in view of Roberts (US 5097627).

For claims 1 & 17, Sparkes teaches a rotary hydroponic plant growing machine comprising a cylindrical shell 1,16 for holding plant containers, such that said plants grow in said containers in a direction radially inwardly of said shell (see fig. 2 where the roots of the plant grow in a direction radially inwardly of the shell); a base 3,4; means for rotating 14,M the cylindrical shell on the base; a light 17 inside the cylindrical structure; and means 26,27 for watering the plants in the containers as the shell rotates, the shell comprises a circumferential surface which defines a plurality of openings 20 along the cylindrical shell to receive plant containers 21. However, Sparkes is silent about the cylindrical shell having slots that allow slidable movement of the containers in a direction parallel to the axis of the cylindrical structure.

Roberts teaches a hydroponic system comprising a plant holding shell 8 having longitudinal slot (fig. 5, ref. 80) to receive plant containers 32, the slot is configured to allow one to slide the container in a direction parallel to the entire length of the shell. It would have been an obvious substitution of functional equivalent to substitute the

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opening along the cylindrical shell of Sparkes to hold plant containers with the slot along the shell of Roberts to hold plant containers, since both types of holding system would perform the same function to allow a user to remove the plant containers from the structure.

For claims 8-10, in addition to the above, Robert teaches plant containers 32 having flanges 82 that slide into openings 79,82 of the plant holding shell 8 for sliding engagement of the containers 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include plant containers with flanges and openings as further taught by Roberts in the plant holding shell of Sparkes as modified by Roberts in order to, not only allow sliding engagement of the shell and containers, but also to secure the plant containers in position by connecting the flanges in the openings.

Response to Arguments

3. Applicant's arguments filed 7/7/05 have been fully considered but they are not persuasive.

Applicant argued that Sparkes teaches away from an apparatus wherein the plants grow in said containers in a direction radially inwardly of said cylindrical shell.

Clearly from fig. 2 of Sparkes that the plant 25 grows radially inwardly of the shell, thus, Sparkes does teach this limitation.

Applicant argued that Roberts does not disclose a rotary plant growing apparatus and the plants grow in said containers in a direction radially inwardly of said cylindrical shell.

Roberts was not relied upon for a rotary plant apparatus or the plants grow in said containers in a direction radially inwardly of said cylindrical shell. As clearly stated in the rejection, Roberts is relied upon for a plant holding method, i.e. one that have slots to allow slidable movement of the containers in a direction parallel to the axis of the apparatus. Therefore, to argue that Roberts does not teach rotary and radially inwardly plant growing direction would be mooted.

Conclusion


4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn